I. Functions of Tort Law
   A. Deterrence and Accident Prevention
      1. reduce the level of accidents
      2. financial responsibility for accidents encourages safe behavior
   B. Compensation
      1. concern for victims and their families
      2. should enable them to recover past, present, and future expenses
   C. Avoidance of undue burdens on economic activities
      1. should not unnecessarily burden productive businesses
      2. liability insurance aids this avoidance
   D. Effective and Efficient Legal Process
      1. should be efficient and provide standards to the community
      2. provide guidance to lawyers and juries and laypeople
   E. Fairness
      1. must be overarching component in order for public to accept system
      2. would not function if public did not view it as fair.

II. Personal Injury Damages
   A. Medical Expenses, Past medical expenses, future medical expenses, earnings losses, past and future earnings losses, loss of household services, pain and suffering, loss of consortium, life expectancy, work life expectancy, reduction to present value, punitive damages, wrongful death, attorney’s fees

Negligence
   I. Elements of a Negligence Case
      A. Duty
         1. did the Δ have a legal obligation to exercise some level of care to avoid the risk of harming persons or property?
         2. legal question, decided by judges
         3. Generally, a duty to foreseeable plaintiffs to exercise reasonable care
      B. Breach of Duty
         1. Did the Δ’s conduct fall below the level of care owed to the Π?
         2. in light of the foreseeable risks, was Δ’s conduct unreasonable?
         3. has the Δ failed to meet the standard of care (the Δ’s legal obligation to the Π)
         4. When determining breach of duty, ask:
            a) alleged ground of negligence
            b) whether the risk was foreseeable
            c) probability of risk coming about
            d) seriousness of the harm threatened
            e) whether the precaution is feasible, its cost, and whether it impairs other purposes
            f) what has to be sacrificed to take the precaution
      C. Causation (Cause-in-Fact)
         1. did a causal connection exist between the Δ’s unreasonable conduct and the Π’s harm?
         2. usually two tests: but for test, or substantial factor test
      D. Scope of Liability
1. Did Δ’s obligation include the general type of harm the Π experienced?
2. Are there intervening causes so unexpected that they are superseding?
3. Liability limitation device
4. Even if Δ was negligent, and cause the injury, sometimes liability is inappropriate because it is pushed too far.

E. Damages
1. What legally recognizable losses has the Π incurred to date, and what losses may be incurred in the future?
2. Π must have sustained actual loss.
3. Theory is to return the plaintiff to the pre-injury condition

II. Proving Negligence
A. Must be only a preponderance of evidence, not beyond a reasonable doubt.
B. Burden of proof has two parts: 1) bring evidence and 2) persuade jury
C. Rudolph v Arizona BASS Federation
   1. A person owes a general duty of care when their behavior creates a foreseeable risk of harm.

III. Defenses to Negligence
A. Once Π reaches prima facie case, Δ has opportunity to provide defenses
   a) contributory negligence/comparative fault, assumption of risk, statutes of limitation, immunity defenses

IV. Vicarious Liability:
A. Typically found in an employer/employee relationship.
B. If the employee is acting within the scope of his employment, then typically any tort that that employee has, (particularly negligence) will be attributed to the employer.
C. Take into account:
   - The extent of control over which the master is authorized over the details of the work
   - Whether the actor is engaged in a distinct occ. or business
   - Whether the occupation is performed under employers supervision
   - Who supplies tools and equipment
   - How long is the employee employed? Short term? Day worker? Long term hiring?
   - Is the work part of the employers regular business?
   - Scope of employment: conduct of a servant is within the scope if and only if
     a) it is the kind he is employed to perform
     b) done to serve the master
     c) the use of force is unexpected by the master
D. There is no vicarious liability when dealing with independent contractors! They carry their own liability. Own tools, short term, own insurance

V. Objective test/Reasonable Person
A. Use objectively reasonable not subjectively reasonable standard
B. Doesn’t matter if person believed himself to be acting reasonably.
C. Does not take into account individuals’ weaknesses.
D. Error of judgement doesn’t = unreasonableness (Reed v Tacoma)
E. Acting by instinct (ie swatting a bee in a car) is reasonable (Lussan v Grain Dealers)
F. Reasonable woman standard?
   1. We resist the idea of separation, to avoid reinforcing stereotypes
   2. Do you tell jury to take into account that she’s a woman? (Edwards v Johnson)
3. just constantly challenge the inclusiveness of the model underlying the assessment of reasonable person.

G. do not take into account special abilities of people outside a professional std.
H. DO take into account physical disabilities (reasonable blind man)
I. DO NOT take into account mental disabilities/illnesses unless physically manifested.
   a) Bashi v Wodarz - a freak bout of mental illness does not get considered
   b) too hard to prove, and separate from mere temperament
   c) easy to feign,

J. Question is how a “reasonable person of ordinary prudence” would have acted in the same or similar circumstances

VI. Emergency
A. To claim emergency, you need 3 elements:
   a) unforeseen combo of circumstances calling for immediate action
   b) perplexing contingency or complication of circumstances, not self inflicted
   c) sudden or unexpected occasion for action, exigency, pressing necessity

B. Foster v Strutz
   a) was there an emergency when people in the truck were being attacked and they slammed the car in reverse, hitting the innocent plaintiff?
   b) no, not immediate enough

C. Emergency is not used much, for fear that with the instruction, juries place too much weight on it.
   a) might be superfluous b/c the standard remains the same

VII. Children
A. Child standard of care: measured against children of same age, intelligence, experience, and maturity
   B. unless participating in an inherently dangerous, or adult activity
   C. some states hold children under 7 are incapable of negligence

VIII. Balancing Risk v Untaken Precautions
A. United States v Carroll Towing
   a) no bargee on board, and the barge crashed, held risk of no bargee during the day > burden of having one
   B. Hand’s formula: B < PL
      a) Likelihood of harm and potential seriousness of harm against burden of taking adequate precautions to prevent the harm
      b) morally deficient
      c) tugboat cptn goes to the bathroom, while he’s gone, boat destroys dock. Negligent?
      d) serves only as a rough guideline

B. Untaken Precautions
   1. Risk may be included in calculations as long as it would be reduced by the untaken precautions in question, and as long as it is foreseeable
   2. McCarty v Pheasant Run
      3. McCarty attacked in her hotel room. Her door was unlocked but she didn’t check it.
      4. did no good for them to have a better lock if she didn’t lock the door
      5. key is knowing which untaken precaution to focus on

IX. Role of Custom
A. relevant customary practices are generally allowed into evidence to guide in determining reasonableness

B. provides perspectives of similarly situated members of the community

C. Used in 2 Ways
   1. show the Δ’s deviation from custom as evidence of unreasonable conduct
   2. Δ may say his compliance with custom evidences reasonableness.

D. Hagerman Construction Inc. v Copeland
   1. custom can be used to determine reasonableness
   2. worker fell through uncovered opening in a wall

E. Trimarco v Klein
   1. bathtub glass broke, custom in apartments was to replace it with unbreakable glass
   2. custom not necessarily a compelling test of negligence
   3. reflects the experience and conduct of any, shows feasibility.
   4. Customs still must be reasonable!
   5. must show custom is there to protect against the type of harm suffered by the plaintiff

F. 3 relevancies:
   1. alerts fact finder to the impact on business institutions of finding for negligence
   2. addresses the feasibility and practicality of alternatives, and
   3. demonstrates the opportunity or lack thereof to learn of other safeguards

G. TJ Hooper
   1. tugs caused the crash of barges in a storm
   2. custom was to not have radios
   3. reasonable prudence is not always customary prudence
   4. Custom evidence in malpractice, however, is typically conclusive

X. Alternatives to the Reasonable Care Standard

A. Specific Judicial Standards
   1. Minimum stds of reasonable care can be evolved by judges as rules of law: Holmes
      a) consistency of verdicts, efficacy of jury trials, effective deterrence,
   2. Baltimore & Ohio RR Co v Goodman
      a) Holmes found that man getting run over by train was at his own risk. He knew the danger and proceeded.
      b) Holmes wants to lay down a standard of care to check better at RRs
   3. Pokora v Wabash Ry Co.
      a) driver was hit by the train, but he used the faculties available to one in his position
      b) leave to the jury whether he should have gotten out and looked: Cardozo
      c) any standards of conduct declared by courts should be reflective of facts of life

B. Safety Standards and Regulation
   1. Plaintiff must have been a member of the class statute seeks to protect
   2. Harm suffered must have been type of harm legislature sought to protect against
      a) Ferrell v Baxter
         i. plaintiff violated traffic safety statute
         ii. traffic laws dictate a standard of care owed by driver to public
   3. If no excuse for violation, then negligence
   3. Majority of jurisdictions say “negligence per se”
      a) will create a rebuttable presumption of negligence
   4. Minority of jurisdictions say just evidence of negligence.
5. in “Reasonable” statutes, usually no negligence per se.
6. some statutes there is no excuse for violation: child labor/employment safety etc
7. Excuses for violation:
   a) actors incapacity
   b) actor doesn’t know and shouldn’t know of occasion for compliance
   c) unable to reasonably comply
   d) emergency not his own making
   e) compliance would involve a greater risk of harm

<table>
<thead>
<tr>
<th>Statutory Standard of Care Approaches</th>
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</thead>
<tbody>
<tr>
<td>1. Strict Negligence Per Se (no excuse permitted) (rare)</td>
</tr>
<tr>
<td>2. Negligence Per Se (Statutory violation creates presumption of breach but Defendant may try to prove application of a specific acceptable excuse) (majority)</td>
</tr>
<tr>
<td>3. Negligence per se (Statutory violation creates presumption of breach but defendant may try to sow reasonable care notwithstanding statutory violation)</td>
</tr>
<tr>
<td>4. Evidence of Negligence (Standard of care remains the reasonable person but Defendant’s violation of a relevant statute goes to the jury as part of a breach determination)</td>
</tr>
</tbody>
</table>

8. **Bauman v Crawford**
   a) kid broke a law while riding his bike, and plaintiff suffered injury
   b) violation of a statute is evidence of negligence only if a reasonable child of same age, intelligence, maturity and experience as the child would not have violated

XI. Proof of Negligence

A. Circumstantial Proof
   1. evidence from which a reasonable inference may be drawn
   2. used particularly in slip and fall cases and res ipsa loquitur
   3. **Clark v Kmart**
      a) slip and fall: grapes must have been there for over an hour
      b) therefore employees not doing their duty to keep clean.
      c) inferred fact must be probable conclusion, not just a possible one.

B. Res Ipsa Loquitur
   1. 3 conditions (from Eaton)
      a) accident which produced injury was one which ordinarily doesn’t happen unless someone was negligent
      b) instrumentality or agent which caused the accident was under the exclusive control of the defendant
      c) the circumstances indicated that the untoward event was not caused or contributed to by any act or neglect on the part of the injured person
   2. **Byrne v Boadle**
      a) Barrel of Flour falls out of a window
   3. used when difficult for plaintiff to show proof
   4. **Eaton v Eaton**
      a) car accident, car left the road. Court found driver negligent under res ipsa
      b) bottom line: “harm was probably caused by negligence, and probably the fault of the Δ”

5. **Harder v Clinton**
Elements of Res Ipsa Loquitur

1. Inference that someone was negligent
   -accident is of a kind that ordinarily does not occur in the absence of someone’s negligence
   Proof: facts of accident, common knowledge, common sense, experts
2. Inference that Defendant was negligent
   -apparent cause of accident is such that the defendant would be responsible for any negligence connected with it
   -Jury must be able to find that more likely than not the defendant’s negligent conduct or omission caused the accident
   Proof: evidence of exclusive control by the Δ, evidence that the negligence likely occurred when instrumentality was under control of defendant, disprove possible negligence of 3rd parties, Π < 50% contribution in comparative negligence

6. Ybarra v Spangard
   a) under anesthetics, plaintiff received serious injury not related to surgery
   b) all Δs who had any control over his body or the instrumentalities were to be held accountable

7. Joint and Several Liability
   a) each defendant can be held responsible to pay the entire judgment damage award, instead of being liable for a proportionate share
   b) plaintiff can still only collect once

Proof of Breach
Π’s burden—to prove Δ’s specific unreasonable conduct
Evidence—either direct (eyewitness) or circumstantial
Slip/Fall—Δ’s constructive knowledge
Res Ipsa Loquitur—Probably negligence and probably Δ.

C. Standard of Care in Medical Malpractice

1. negligence in care of patients and negligence in non-informed consent

2. Velazquez v Portadin
   a) “Standard of care is...degree of care, skill, and proficiency commonly exercised by ordinary careful, skillful, and prudent doctor at time of operation and in similar locations.”
   b) baby is injured, not due to a medical judgement error, but due to possible unreasonable care in medical procedure
   c) A doctor’s compliance with any acceptable method protects him from malpractice liability. When there is a choice of two, the selection will not be negligence.
3. Proving medical malpractice
   a) use an expert
   b) some can just use common sense—removing the wrong leg etc = res ipsa

4. Phillips v Hull
   a) any medical procedures must be done w/consent, or it is battery.
      i. professional standard: requirement to disclose facts a reasonable medical practitioner would disclose in that situation
      ii. lay standard: requirement to disclose information a patient wants to know.
   b) dr should disclose: 1. diagnosis 2. nature and purpose of treatment 3. risks and consequences 4. alternatives 5. probability of success 6. prognosis if treatment isn’t given
c) need consent for anesthesia, for surgery, and for hospital procedures

D. Legal Malpractice and liability of professionals
   1. Professional—anyone who is expected to adhere to standards of conduct
   2. Smith v Lewis
      1. attorney expected to do adequate research to make an informed and intelligent decision for his client

### Standards of Care

<table>
<thead>
<tr>
<th>Reasonable Prudent Person</th>
<th>Mental Condition (no)</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Physical Condition (yes)</td>
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<tr>
<td></td>
<td>Emergency (yes)</td>
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<tr>
<td>Child</td>
<td>Adult Activity</td>
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<td></td>
<td>Reasonable Child of same age/experience/intelligence</td>
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<td></td>
<td>Common Law = (under 7, no negligence)</td>
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<tr>
<td>Statutes</td>
<td>Plaintiff in Protected Class</td>
</tr>
<tr>
<td>(negligence per se)</td>
<td>Type of harm meant to protect</td>
</tr>
<tr>
<td></td>
<td>Excuse?</td>
</tr>
<tr>
<td>Professional</td>
<td>Medical Malpractice</td>
</tr>
<tr>
<td>Doctors</td>
<td>Professional Standard (custom)</td>
</tr>
<tr>
<td>Informed Consent</td>
<td>Patient Standard (materiaility)</td>
</tr>
<tr>
<td>Other professionals</td>
<td></td>
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<table>
<thead>
<tr>
<th>Standard of Care</th>
<th>Breach of Duty Analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Reasonably Prudent Person under same or</td>
<td>Burden&lt;Probability x Magnitude, Custom</td>
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</table>
similar circumstances

| 2. Child unless engaged in adult/extremely dangerous activities | Failure to act like other children of same age, experience, and intelligence |
| 3. Professional: custom is the standard of care | Deviation from custom [expert witness usually required, unless common sense] |
| 4. Statutes: terms of statutes may become the standard of care | Violation of statute [negligence per se or evidence of negligence] |

XII. General Duty of Reasonable Care
   A. actor owes a duty of reasonable care under the circumstances to those persons who are foreseeably exposed to physical risks arising from the actor’s conduct.
      
      B. MacPherson v Buick Motor Co
         1. manufacturer, sold to retailer with bad wheel. Retailer didn’t inspect, II bought and was injured.
         2. does Δ owe a duty to anyone other than immediate purchaser?
         3. If the nature of a thing is such that it is reasonably certain to place life and lib in peril when negligently made, it is a thing of danger.
         4. danger + knowledge it will be used by someone else, then manufacturer has duty

C. Policy reasons for finding duty:
   1. Allocation of loss, fairness, deterrence, Economic Considerations, Administrative Concerns, Legislative concern

XIII. Limited Duty Rules:
   A. No duty to act unless the party has engaged in affirmative conduct creating the risks of harm resulting in the accident
   B. courts don’t want to mandate altruism = free moral agency
   C. Misfeasance: affirmative conduct which creates the risk of harm
   D. Nonfeasance: failure to take steps to alleviate risks of harm you didn’t create
   E. Special relationship exceptions:
      1. parent/child, teacher/student
      2. party agreeing to provide aid
      3. party has voluntarily began to assist
         a) some say no liability if party leaves injured no worse off than he was before
         b) some say volunteer may not quit if it is unreasonable to do so
      4. statute imposes a duty to assist
   F. Farwell v Keaton
      1. Siegrist began to rescue Farwell, gave him an icepack, they were co-adventurers
      2. court says duty b/c special relationship, and because he knew of the peril, and could easily have rendered assistance
   G. Intentional Prevention of Aid by Others is not allowed!
   H. Remedies for Injured Rescuers
      1. usually treated under Scope of Liability
      2. sometimes you can collect from injured

XIV. Owners and Occupiers of Land
   A. Many jurisdictions use status trichotomy analysis: duty differs depending on status of visitor
B. American Industries Life Insurance v Ruvalcaba
1. employees son visits dad at work, falls through unsafe railings on property and dies
2. Invitee: owner has duty to use reasonable care to protect from conditions that create an unreasonable risk of harm of which the owner knows or b the exercise of reasonable care would discover.
   a) invitee if you had business relations, of mutual benefit to both
   or if a public place.
   b) should include at least a potential profit, and an invitation
   c) young children are invitees if owner reasonably expects them
3. Liscensee: duty not to injure the licensee willfully, wantonly, or through gross negligence, and, in cases where he owner has actual knowledge, to fix condition or warn
4. Trespasser: duty to not cause injury willfully, wantonly, or through gross negligence

C. different duties depending on Activity or Condition of the Land

D. liable for injury to child trespassors, if
1. place is one where owner knows/has reason to know children are likely to trespass
2. condition is one which involves an unreasonable risk of death/harm to children
3. children b/c of age do not discover condition or realize the risk involved with it
4. burden or eliminating danger is slight compared to risk to the children
5. possessor fails to exercise reasonable care to protect the children

E. Rowland v Christian p288
1. Landlord told Tenant faucet handle was cracked and needed to be fixed
2. Tenant a month later injured himself on the handle.
3. Court says trichotomy is archaic, and moves towards a “single duty of reasonable care in all circumstances.”
4. trichotomy is contrary to modern morals.
5. Δ knew of the danger, the defect was not obvious, Π was about to come into contact with it, a failure to adequately warn or fix the condition = negligence

F. Loss of Consortium
1. when a family member is lost, loss of companionship, affection, counseling, household and other services, sexual activity, emotional support, ect.

XV. Limited Duty: Emotional Harm without Physical Harm
A. Emotional distress of persons subject to physical risk
   a) woman scared by horses had a miscarriage
   b) Fright cannot be the basis of an action, no matter what the injury
2. old rule: people could not recover emotionally unless physical injury involved.
3. then, reexamining where emotional distress alone could be a cause, if the person was subject to physical risk=physical risk line of cases
   a) Impact rule: don’t need a physical injury to recover, but must be physical impact of some sort in an accident context
   b) Zone of Physical Danger Rule 1: Fear for one’s own physical well-being: can recover for emotional distress if in the zone of danger, where the distress came from fear of own injury.
      i. zone of physical danger-geographic space within which a party is at foreseeable risk of injury
      ii. requires serious emotional distress to recover.
c) Zone of physical Danger Rule 2: Fear for physical well-being of another: if a family member is injured, and you are within the zone of physical danger, and emotional distress arises not from fear for your own injury, but from seeing a loved one injured.

B. Bystander Emotional Harm
   1. Bystander liability: Δ’s violation of a duty not to negligently cause emotional distress to people who observe conduct which causes harm to another.
      1. grew from Zone of Physical Danger rule 2.
      2. where negligent conduct creates a risk of physical harm to a close family member and the Δ witnesses the accident.
      3. Clohessy v Bachelor
         a) mother and brother witnessed Brendan get hit by a car and die
         b) court uses Thing test, for foreseeability with limitations
   4. Cannot recover from merely the fright of another being harmed
   6) Merely observing consequences of accident are not enough, must observe impact.
   7) Generally two schools: “zone of danger,” and “reasonable foreseeability.”
      a) zone of danger-
         i. allow one who is himself or herself threatened with bodily harm in consequence of the Δ’s negligence, to recover for emo distress resulting from viewing of the injury of a member of his or her immediate family
         ii. much narrower than Dillon
      b) reasonable foreseeability-Dillon rules
         i. was the Δ located near the scene of the accident vs far away from it?
         ii. was the shock from contemporaneous sensory perception the accident, or viewing him immediately after, or from hearing about it?
         iii. Were the Δ and victim closely related or distantly related?
         iv. very broad test.
   c) Alternative test from Thing court, trying to limit damages:
      i. Δ is closely related to victim
      ii. present at scene of event and is aware that injury is being caused
      iii. suffers serious emotional distress as a result – reaction beyond that which would be anticipated in disinterested witness and which is not an abnormal response to the circumstances.

C. Independent Duty for Emotional Well-Being
   1. Direct victim: damages for ED sought as a result of a breach of duty owed the plaintiff that is “assumed by Δ or imposed as a matter of law, or arises from a relationship.”
   2. duty to act reasonably for the plaintiff’s emotional well being
      a) Defendant assumes delicate responsibility
         i. funeral homes/body handling cases
         ii. few plaintiffs, strong likelihood of ED
      b) duty assumed if imposed by law, if the emotional condition of the Δ is an object, or a duty exists under special relationships
   2. Burgess v Superior Court p329
      a) mother sues physician for ED when her baby is injured during delivery
      b) dr. says he only owes a DV duty to the baby, mother could only plead bystander
c) court finds mother and baby are inextricably interwound, a duty to the baby is a duty to the mother.

3. **Huggins v Longs Drug Stores** p334
   a) pharmacist gives wrong prescription for baby to parents, they give baby wrong prescription and kill it.
   b) court finds that b/c drugs were for baby, parents were not direct victims

4. **Boyles v Kerr**
   a) Boyles taped having sex with Kerr, Kerr sues for emotional damages
   b) court says mental anguish must be in combination with breach of another duty
   c) unfair against women? Most ED claims are women II against men Δs.

D. Duty to Protect against future disease
1. Δ’s conduct places people in fear of contacting disease
2. **Majca v Beekil**
   a) want damages for fear of contacting aids, for time period between poss exposure to AIDS and receipt of conclusive test results
   b) II’s lose b/c didn’t show actual contact with AIDS,
3. fear must be reasonable, like AIDS test “window of anxiety”
4. must show actual exposure
5. Toxic Torts
   a) prove more likely that not that they will contract cancer (Potter, p 351)
   b) unless Δ acted with oppression, fraud, or knowing and reckless disregard
6. Medical Monitoring?
   a) significant exposure, negligence of Δ, significantly increased risk of disease, early detection and treatment is beneficial, physician would reasonably prescribe a monitoring regime
7. Some courts require a physical impact to claim damages for fear of future disease

E. Mental Health Professional’s Duty to 3d Parties Based on Special Relationship with Risk Poser
1. **Tarasoff v Regents of University of California** p367
   a) man confessed to psychologist he wanted to kill a girl. Did therapist have a duty to warn?
   b) generally, duty is owed to all persons foreseeably endangered by conduct, with respects to all risks which make the conduct unreasonably dangerous
   c) under CL, one person owed no duty to control the conduct of another unless a special relationship exists btw person needing controlled or foreseeable victim.
   d) in this case, special relationship exists between therapist and patient
   e) must balance risks that therapists could inaccurately predict violence, and breaking the client therapist privilege discourages them from going to therapists
   f) protective privilege ends where public peril begins.
2. **Dunkle v Food Service East**
   a) schitzo kills his live in girlfriend
   b) therapist has no duty to warn if threats not towards a specific person
   c) otherwise, it would hinder psychologists relationship with patient

F. Duty to Protect Against Criminal Activity:
1. In special relationships, CL says duty to take reasonable affirmative measures to protect other party from criminal activity
a) LL/Tenant, business owner/patron, property owner/invitee, employer/employee, hotel/guest, teacher/student etc.

G. Delta Tau Delta v Johnson p 384
1. Johnson sexually assaulted at frat house, sues Frat.
2. A landowner has a duty to protect invitees from foreseeable criminal acts.
3. How do we know if criminal acts are foreseeable?
   a) specific harm test
      i. landowner owes no duty unless owner knew or should have known that the specific harm was occurring or as about to occur.
      ii. minority view
   b) prior similar incidents test
      i. landowner may owe a duty of reasonable care if evidence of prior similar incidents of crime on or near the landowner’s property shows that the crime in question was foreseeable.
      ii. consider number of past incidents, proximity in time/location, and similarity of crimes
      iii. first victim is not entitled to recover!
   c) totality of the circumstances test
      i. consider all circumstances surrounding, including nature, condition, and location of land, + prior similar incidents to determine whether it was foreseeable
   d) balancing test
      i. balance the degree of foreseeability of harm against the burden of the duty to be imposed
   e). Court assumed totality of circumstances test, ruled for II.
      i. DTD was aware of risk, it was foreseeable = duty
      ii. posters are not assumption of duty by nat, b/c no recourse to nat. frat.

H. Public Agency Duty to Protect Citizens
1. Cuffy v City of New York p402
   a) LL/T dispute, Cuffys asked for specific protection from police
   b) plaintiff relied on promise by police of “an arrest or something should be done, first thing in the morning.”
   c) police didn’t do anything
   d) generally, municipality may not be held liable for injuries resulting from a failure to provide police protection, unless in a special relationship
   e) when police have lead parties into a false sense of security, and induced him to relax his own vigilance or forgo other protection, may be a case, if
      i. assumption by municipality of affirmative duty to act on behalf of party
      ii. knowledge by municipality that inaction will lead to injury
      iii. direct contact btw agents and the injured party
      iv. party’s justifiable reliance on municipality’s undertaking.
   f) cuffy had looked out window, and knew no cops had come, so no reliance.
XVI. Causation

A. requires a connection between \( \Delta \)'s negligence and \( \Pi \)'s injuries

B. Was the \( \Delta \)'s conduct a contributing factor, without which the injury would not have occurred?

C. The But-For Test

1. Sowles v Moore p 438
   a) horses fell into hole cut by ice company and drowned; the hole was not guarded
   b) court found that reasonable guards would not have prevented the horses falling

2. New York Central RR. Co. v Grimstad
   a) captain of barge drowned, sued for improper stock of life saving eqpt.
   b) court found no evidence that had there been proper eqpt, the wife would have been able to get it to him.

3. Does not work well for multiple causation. Match on a forest fire.

B. The Substantial Factor Test

1. where two actors independently and simultaneously act negligently towards a \( \Pi \), and the neg act of either one alone was sufficient to cause the injury, the but for test is under inclusive; it would excuse both actors.
   a) Corey v Havener p 441
      i. two motorcyclers spooked \( \Pi \)'s horse and injured \( \Pi \)
      ii. each would get off on but for test.
      iii. \( \Pi \) entitled to judgment against each for full amount
   b). Mitchell v Gonzalez
      i. Gonzalezes watching Mitchell’s child, child drowned
      ii. use of the but for test overly emphasizes child’s not being able to swim
      iii. use the substantial factor test to accommodate liability for Gonzalezes

2. Actor’s negligent conduct is a legal cause of harm to another if:
   a) conduct is substantial factor in bringing about the harm or
   b) no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in the harm

3. usually the two tests will reach the same result

4. Smith v JC Penney Co. Inc p 444
   a) gas blow out caused \( \Pi \)'s fur coat to ignite
   b) jury has to find that Enco’s behavior was a substantial factor in \( \Pi \)'s harm

C. Proof of Causation

1. Cumulating Proof to Identify the Cause
   a) Ingersoll v Liberty Bank of Buffalo p 446

<table>
<thead>
<tr>
<th>Framework for Duty</th>
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<tbody>
<tr>
<td>1. Start with presumption of general duty of reasonable care applies</td>
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<tr>
<td>2. Do any limited duty rules apply?</td>
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<tr>
<td>3. if one or more limited duty rules apply, are there any exceptions to the rules that are relevant?</td>
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<tr>
<td>4. if no exceptions, and the ( \Pi ) would fall under the limited duty rule, then should there be an exception?</td>
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<td>5. if no limited duty rule applies, the ( \Delta ) might try to persuade the court to create such a rule, if in a new area</td>
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<tr>
<td>6. If the court determines that no limited duty rule or exception is applicable, the general duty principle applies</td>
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</table>
i) Defendant and decedent lived in apartment with broken stairs
ii) Decedent fell down stairs and died, carrying a box
iii) When there are several possible causes of an injury, one or more of which the defendant was not responsible, and it is just as reasonable and probable that the injury was the result of one cause as the other, the defendant cannot have a recovery, since he failed to prove that the negligence of the defendant caused the injury.
iv) Plaintiff doesn’t have to positively exclude every other cause, just has to show that this situation was a reasonable possibility, to make prima facie.

2. Use Eyewitnesses, Circumstantial Evidence, Expert testimony

D. Untaken Precautions: Proving the Counterfactual

1. *Saelzer v Advanced Group 400* p455
   a) Plaintiff was attacked when trying to deliver a package to apartment complex
   b) Alleges defendant knew the dangerousness of their building, but failed to take precaution
   c) Plaintiff must show that the defendant’s omission was a substantial factor in injury
   d) Court says that because she didn’t know if her attackers were tenants or not, security guards and better gates might not have prevented the injury. = no causation
   e) Policy issue: All injuries could be avoided with more security.

2. *Zuchowicz v United States*
   a) She was prescribed double the prescription and got a disease
   b) Court found that greater dosages are more likely to cause illness, therefore using Cardozo’s rules below, there is causation

3. Cardozo and Traynor say:
   a) If a negligent act was deemed wrongful because that act increased the chances that a particular type of accident would occur, and
   b) A mishap of that very sort did occur
   c) Then this was enough evidence to show causation

E. Multiple Parties: Apportionment of Damages or Joint Liability

1. Where two or more independently negligent parties cause a single, indivisible harm, courts generally hold each liable for the entire harm.
   a) Plaintiff still only limited to one recovery

2. *Fugere v Pierce* p468
   a) Three car collision, plaintiff’s injuries indecipherable
   b) If the defendant claims the damages are apportionable, it is the defendant’s burden to do so.
   c) If there is evidence that the plaintiff’s injuries are capable of separation, ? for jury

3. Often joint and several liability used in employer-employee context

4. With joint and several, plaintiff must prove that each defendant was negligent, and that each defendant’s negligence was a cause of harm.

5. Some states have abolished joint and several liability

F. Loss of Chance of Recovery

1. What if something lessens someone’s life expectancy?

2. *Herskovits v Group Health Coop of Puget Sound* p482
   a) Woman with disease has <50% chance of survival
   b) Through malpractice, doctor lessens it to 25%.
c) court finds damages awarded proportionally, based on damages caused directly by premature death.

G. Proving Who Caused the Harm
1. Alternative Liability
   a) sometimes inadequate proof of causal relationship b/c of \( \Delta \)'s actions
   b) some courts shift burden of proof to \( \Delta \)
   c) **Summers v Tice**
      i. both shot at plaintiff, don’t know whose shell hit
      ii. both acted negligently, they should have the burden of apportioning
      iii. each \( \Delta \) liable for whole damage, whether they acted together or not
   d) **Barron v Martin Marietta Corp** p 521
      i. Products liability case, workers subjected to toluene from a missile
      ii. unable to show enough evidence that it was an MMI missile that leaked, and not one from the other manufacturer
      iii. in order to shift burden to \( \Delta \),
         - \( \Pi \) does not know identity of actual tortfeasor
         - all of the \( \Delta \)s acted tortiously
         - negligent act of one \( \Delta \) was a cause of \( \Pi \)'s injury
         - injury was such that it could only result from one of the \( \Delta \)'s neg

H. Market Share Liability
1. Market Share Theory
2. \( \Pi \) must present sufficient evidence that alleged defective condition of product was a but-for cause or a substantial factor in contributing to injuries
3. sometimes \( \Pi \) doesn’t know which manufacturer among many caused the injury
   a) **Hymowitz v Eli Lilly Co.** p 526
      i. bad drug manufactured, injured lots of \( \Pi \)s.
      ii. who knows what manufacturer made your particular drug
      iii. many times, harm was latent, and stat of lim. was up.
      iv. can we use Alternative Liability theory?
      v. no: impossible for \( \Delta \)'s to sort it out among themselves, too many, and no evidence of conspiracy to show J&S liability.
      vi. \( \Delta \)'s are held liable according to their market share, unless they can reasonably exculpate themselves, if they didn’t use it for pregnancy.

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**Proof of Causation**
1. Preponderance Burden
2. Sufficiency of Evidence
3. Directed Verdict Motions
4. JNOV Motions
5. Shifting of Burden of Proof
6. Rethinking a Tort
7. Loss of a Chance
8. Toxic Torts
9. Market Share Liability
XVII. Scope of Liability
A. sets bounds for liability for a Δ.
B. Close cases are left for jury decision
C. Direct Consequences Test
   1. if a consequence can be directly traced to an event, with no intervening forces, then there is liability.
   2. Forseeable intervening forces do not cut off liability
   3. Unforseeable intervening forces DO cut off liability
   4. In re arbitration between Polemis and Partner and Furness, Withy &Co. p549
      a) dropped plank causes spark, ship burns down
      b) b/c some damage was foreseeable from a dropped plank, all damage ok.
   5. This rule too expansive: both under and over inclusive
   6. Rarely used anymore
D. Foresight Test
   1. sets limit of liability based on the risks that made the conduct negligent in the first place
   2. also expansive: base it on common sense and community values etc.
E. Is There A Scope of Liability Issue?
   1. Is there an arguably unforeseen plaintiff?
   2. Are there arguably unforeseen consequences?
   3. Is there arguably intervening conduct?
F. Foresight Rule: Unforseeable Plaintiffs
   1. Palsgraf v Long Island RR Co. p552
      a) man holding box of fireworks trying to get on train
      b) train men help him on, his box falls and explodes, shakes platform
      c) scales on other end of platform fall and hurt Palsgraf
      d) risk reasonably to be perceived defines the duty to be obeyed
      e) Cardozo: no duty to unforeseeable plaintiffs! Duty to specific people
         i. majority in today’s courts
      f) Andrews: looks at straight but for causation. Duty to world at large
G. Foresight Rule: Unforseeable Consequences
   1. Juisti v Hyatt Hotel Corporation of Maryland p559
      a) cleaning crew cleaned oven, forgot to open vent, set off alarm
      b) woman racing down fire escape from 14th floor suffered collapsed lung
      c) Analysis of forseeability turns on whether the actual harm to the Π fell within a general field of danger that the Δ should have anticipated, rather than whether the harm was the specific kind that he should have expected.
      d) should be anticipated that a Π might suffer injury by evacuating hotel when the hotel’s negligence caused the fire alarm to go off. Doesn’t matter what the injury was specifically.
   2. Manner of Harm: majority says as long as the Δ’s negligence created a reasonably foreseeable risk of the general kind of harm that occurred, the precise manner of harm doesn’t matter.
   3. Type of Harm: some courts say that the harm must be within the general type of injury that the Δ’s negligence created. (ie failure to turn on kitchen fan does not foreseeably lead to a collapsed lung, but a kitchen worker inhaling fumes…etc)
4. **Risk Standard**: actor should only be held liable for potential harms (risks) that made the actor’s conduct tortuous. Preferable b/c it provides greater clarity facilitates clearer analysis, and better reveals the reason for its existence. Only fair to hold actors liable for those risks that made the conduct wrongful.

5. **Forseeability test**: any II who is foreseeable. Risks being understood b/c of uncertainty about what must be foreseen, by whom, and at what time.

6. Were the particular accident and damages foreseeable?
   a) damages resulting from misconduct typical → always hold for II
   b) damages resulting from misconduct freakish → always hold for Δ
   c) damages are in the middle: if they are more unforeseen, hold for Δ, if they are more typical, hold for II.
      i. major advocacy role in framing stories the right way!

H. Intervening Forces

1. Criminal Conduct of a Third Person
   a) **McClenahan v Cooley** p 570
      i. Δ left keys in his ignition, thief stole car and injured II
      ii. foreseeable intervening cause does not revoke original negligence
      iii. court must decide whether to hold first, intervening, or both liable.
      iv. doesn’t matter if it is negligent, criminal intervening.
   b) **Price v Blaine Kern Artista**
      i. man in giant mask attacked and fell, sues mask co for no safety device
      ii. court finds it reasonable to have forseen someone in a mask attacked.
   c) **Kimbler v Stillwell**
      i. gun store robbed, man killed
      ii. reasonable to forsee that you’d be robbed if you have no security
      iii. it facilitated possible harm.

2. Shifting Responsibility
   a) when third party intervening conduct, even though foreseeable, is so egregious, that court concludes that a third party alone is responsible for damages
   b) his conduct supersedes conduct of initial actor
   c) **McLaughlin v Mine Safety Appliances**
      i. manufacturer of heat block negligent for failing to adequately warn
      ii. fireman who gives nurse block knew dangers and disregarded them
      iii. fireman callously ignoring the instructions non-forseeable!
   d) **Bigbee v Pacific Telephone and Telegraph**
      i. man injured when hit in a phone booth by drunk driver
      ii. foreseeable plaintiff= duty
      iii. dissent: balance usefulness v gravity of danger. Telephones are useful!
      This would condemn anyone walking down the sidewalk.
   e) was reliance on the due care of the second party appropriate?

3. Exceptions to Foresight Rule: malpractice, eggshell, rescuer
   a) **Association for Retarded Citizens Volusia v Fletcher** p590
      a) lifeguard negligently lets kid sink, then dr. does malpractice causes death
      b) court says, can’t shift blame to malpractice for policy reasons.
      c) don’t want everyone claiming malpractice
      c) it would confuse the issue, lead to many more malpractice suits
I. Eggshell Plaintiff Rule:
   1. *Pace v Ohio Dept of Transportation* p595
      a) snowplow strikes a car, hurts man's little finger
      b) man is diabetic, had to lose finger. Is snow plow liable?
      c) Δ takes the Π as he finds him!

J. Rescuer Rule
   1. *Sears v Morrison*
      a) Sears saves Morrison from a falling swamp cooler
      b) it is foreseeable that someone tries to rescue = not an intervening force!
      c) although rescuer willingly exposed himself, does not exculpate neg. actor #1
      d) Morrison has a right to be negligent to himself, but he has a duty to prudently manage his person so as not to endanger others
      e) Rescuers are protected if they try to rescue reasonably

   2. *Oscar Klein Heating and Plumbing v Boyd* p 601
      a) Boyd's jewelry for sale was being injured by Klein's concrete dust
      b) she consistently cleaned it and got carpal tunnel
      c) property was not in imminent peril, so no rescue doctrine.

<table>
<thead>
<tr>
<th>Summary of scope of liability issues</th>
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<tbody>
<tr>
<td>1. Foresight Analysis</td>
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<tr>
<td>A. Unforeseeable Plaintiffs</td>
</tr>
<tr>
<td>Was the class of persons including the Π within the scope of risks created by the Δ’s negligence?</td>
</tr>
<tr>
<td>B. Unforeseeable Consequences?</td>
</tr>
<tr>
<td>Was the result within the scope of risks created by the Δ’s negligence?</td>
</tr>
<tr>
<td>- type of harm</td>
</tr>
<tr>
<td>- Manner of harm</td>
</tr>
<tr>
<td>C. Intervening forces?</td>
</tr>
<tr>
<td>Was the intervening act a foreseeable risk of the original negligence?</td>
</tr>
<tr>
<td>2. Exceptions to the Foresight Rule:</td>
</tr>
<tr>
<td>A. Medical Malpractice Complications</td>
</tr>
<tr>
<td>B. eggshell Plaintiff Rule</td>
</tr>
<tr>
<td>C. Rescuer Rule</td>
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3. *Allen v Shiroma* p610
   a) plaintiff got out of car to help direct traffic after a minor car accident
   b) Π’s car holding up traffic, gives keys to minor to move his car
   c) minor runs over Π, Π sues first traffic accident causer
   d) Court finds this completely unforeseeable

XVIII. Defenses
   A. Contributory Negligence
      1. arises when unreasonable conduct of Π contributes to the Π’s harm
      2. becomes relevant only after prima facie case of negligence has been met.
3. Δ must show that Π fell below the relevant standard of care and that the Π’s breach of duty w a cause-in-fact and proximate cause of the plaintiff’s injury
4. under contributory negligence, Π is barred from recovery if her unreasonable conduct contributes in any substantial way to her injury.
   a) if Π was 1% liable, and Δ 99% liable, no recovery for Π!
5. Very severe impact! Courts thought of ways around it:
   a)onl y allow defense when Δ was negligent, not when reckless or intentional
   b)Last Clear Chance (jackass rule) a negligent Π could still recover fully if he proves that Δ was more culpable, b/c he had the last chance to prevent the harm.
      i. whoever’s negligence occurred last is at fault
   c) no defense if Π’s fault was based on a statute enacted to protect a class of persons from their own inability to exercise self-protective care.
6. historically used to protect industries from huge liability, such as railroads

B. Comparative Fault
1. Where both a Π and a Δ are at fault, they should share responsibility
   a)Pure comparative fault-negligent Π recovers some damages from neg. Δ no matter how much at fault the Π is
      i. if Π is 98% at fault, he will recover 2% damages from Δ.
   b)Modif ied comparative fault
      i. Π’s recovery is barred if Π’s fault is greater than the Δ’s or as great as the Δ’s (depending on jurisdiction)
      ii. Π who was 40% liable would receive 60% damages from Δ,
      iii. Π who was 60% liable would receive nothing.
2. Hoffman v Jones p 692
   a)should they move from contributory to comparative standard?
   b)yes, contributory is outdated and comparative is more just
3. Last Clear Chance Doctrine not relevant under Comparative Fault
4. Δ need not pay for injuries that could be avoided through Π’s steps such as seatbelt

C. How does a Jury Apportion Fault?
1. Wassell v Adams
   a)Marisconish stays in a hotel near a dangerous part of town. Hotel didn’t warn her, but they did occasionally warn guests
   b)she was awakened by knock at the door, she thought was her husband, but was a rapist. She let him in for a glass of water; he raped her.
   c)was susan more negligent for letting him in, or the hotel for not warning her?
   d)jury found susan 97% negligent

D. Assumption of Risk
1. Express Assumption of Risk
   a)when one person gives explicit written or oral permission to release another pat from an obligation or reasonable care
   b)person not only gives up right to recover if harmed by inherent risks of activity, but also for injuries suffered as a result of the Δ’s unreasonable/negligent conduct.
   c)seen in child sports teams waivers, ski lift waivers, etc
   d)courts consider waivers in context of public policy. waivers for non-profits ok.
   e) is it against public policy?
   f) waivers do NOT relieve Δs of liability for reckless or intentional wrongdoing
2. Implied Assumption of Risk
   a) implied consent can be inferred from a party’s conduct and the circumstances
   b) subjective: looks at Π’s state of mind
   c) 3 basic elements:
      i. knowledge of risk
      ii. appreciation of risk
      iii. voluntary exposure to the risk
   d) burden of pleading and proving assumption of risk is on Δ.
   e) Primary Assumption of Risk
      i. Π enters into relationship with Δ knowing Δ won’t help him should something happen, when Π is participating in something particularly dangerous
      ii. white water rafting: if Π falls out of the boat, Δ won’t rescue
   f) Secondary Assumption of Risk
      i. Π enters into relationship with Δ, knowing Δ won’t help him, AND Π assumes the risk of Δ’s negligence
      ii. white water rafting: if Δ rocks the boat and Π falls, no liability for Δ

g). Bowen v Cochran
   i. Bowen bought an oven. Lit with match and newspaper and left it for 30 min. it blew up.
   ii. knew: he was instructed in proper lighting
   iii. jury can decide. No directed verdict for Bowen

h) Murray v Ramada Inns
i) Cheong v Antablin

XIX. Intentional Torts
A. Overview: negligence relates to risk of injury, intentional torts relate to purpose or desire of an actor to invade the legally protected interest of another
B. Intent: measured by subjective standard, the state of mind.
   1. purpose or desire
   2. subjective knowing or believing that conduct is substantially certain to cause harm
C. A person acts with intent if:
   1. Person has the purpose of producing that consequence; or
   2. Person knows to a substantial certainty that the consequence will ensue from person’s conduct
D. Transferred intent-intent can be transferred tort to tort, and person to person
E. Battery
   1. to protect two interests:
      a) interest in physical integrity
      b) freedom from offensive bodily contact
F. Assault
   1. to protect the mental state of individuals to be free of wrongful apprehension
      a) against threats of battery and false imprisonment
   2. not available unless threat + physical movement
   3. must be fear of imminent contact
4. an “overt act or an attempt or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of another. Display of force must be enough to cause the reasonable apprehension of immediate bodily harm.

G. IIED
1. fills in gaps left by assault
2. if Δ’s conduct exceeds all bounds usually tolerated by decent society and it causes mental distress of a very serious kind.
3. if by extreme and outrageous conduct, Δ intentionally or recklessly causes severe ED to another, he is subject to liability for ED, and bodily harm that results.
4 no physical injury necessary!
5. no foreseeability necessary
6. Assault and battery can lead to IIED

H. Dickens v Puryear p772
1. If had exposed young girl to drugs and sex, her father beat him and threatened if he ever came back he’d kill him.
2. could not recover under Assault/battery, stat of limitations ran
3. future threats cannot be assault, b/c not imminent
3. future threats counted as IIED.

I. Meaning of Intent
1. Villa v Deroen
   a) intentional act, putting torch in Villa’s crotch
   b) caused unintentional harm to Villa
   c) may not have meant full extent of harm, but meant for oxygen to touch Villa
2. White v Muniz
   a) Everly who had alzheimers, struck muniz when she tried to change E’s diaper
   b) Dual intent rule: have to intend to contact and intend it to be harmful
   c) must appreciate the extent of the harm
   d) insanity therefore not a defense, but makes it harder to prove intent.
   e) still reasonable person standard
   f) mentally disabled can be held liable if they can form the requisite intent
3. Ailiff v Mar-Bal Inc p789
   a) in order to establish intent for the purpose of proving the existence of an intentional tort committed by an employer against employee, need to show:
      i. knowledge by employer of the existence of a dangerous process within its business operation
      ii. knowledge by employer that if employee is subjected by his employment to such a dangerous process, then harm to the employee will be a substantial certainty and not just a high risk,
      iii. employer, under such circumstances and with such knowledge did act to require the employee to continue to perform the dangerous task
   b) here, Mar-Ball knew about the dangers of the chemicals, saw results, did not provide protection, and continued dangerous usage. = intent
   c) intent, even though they did not directly intend to poison employees.
4. Leichtman v WLW Jacor Communications p 794
   a) Furman blew smoke directly in face of anti-smoking advocate
b) court finds battery b/c contact is offensive to a reasonable sense of personal dignity is offensive contact.
c) Employer is not legally responsible for the intentional torts of its employees that do not facilitate or promote its business. Unless, an employee is acting within the scope of employment, then it’s a question of fact.

5. **Hall v McBride**
   a) boys shooting at McBryde, he shot back. A bullet struck Pi bystander.
   b) no evidence McBryde intended to shoot Pi. However, he intended to assault other youths, so it is transferable to onlooker, and assault transferable to battery.

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<thead>
<tr>
<th>Elements of Assault</th>
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<tbody>
<tr>
<td>1. Affirmative or Voluntary Act</td>
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<tr>
<td>- words alone insufficient</td>
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<tr>
<td>- action alone insufficient</td>
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<tr>
<td>2. Intent</td>
</tr>
<tr>
<td>- Δ’s purpose of desire is to cause the apprehension, or Δ attempts a battery or false imprisonment and fails</td>
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<td>- substantial certainty rule</td>
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<tr>
<td>- Transferred intent</td>
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<tr>
<td>3. Causation/Volition</td>
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<tr>
<td>- But for causation</td>
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<tr>
<td>4. Reasonable apprehension of harmful or offensive contact</td>
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<tr>
<td>- imminence of threat (no significant delay)</td>
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<tr>
<td>- apparent ability to carry out threat</td>
</tr>
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<td>- Pi must be aware of threat</td>
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<tr>
<td>- Fear not necessary</td>
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<tr>
<td>- Exception if Δ knows of P’s timidity</td>
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<tr>
<td>5. To a person</td>
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6. **Alcorn v Anbro Engineering**
   a) firing someone for race is IIED

7. **Swenson v Northern Crop Insurance**
   a) making sexual remarks not IIED
   b) firing someone for sex is IIED

8. **Logan v Sears, Roebuck and Co**
   a) hold people to reasonable person standards, not homosexual person standard
   b) normal people wouldn’t find “queer” offensive
I. False Imprisonment
1. wrongful confinement restraint or detention of an individual to a limited area.
2. generally, II must e aware of the confinement, this is contested.
3. Walmart v cockrell
   a) falsely imprisoned Karl Cockrell after guard thought he shoplifted
   b) not reasonable manner to make him unpatch his scar
   c) to recover for mental anguish, II must offer high degree of mental pain and distress,
      more than mere worry, anxiety, vexation, embarrassment or anger
4. needs to be
   a) willful detention
   b) performed w/o consent
   c) without authority of law
5. II didn’t feel like she could leave, b/c security told her to stay: yes false imprisonment
6. must be done in a reasonable manner, for a reasonable time, if there is a reasonable belief that
   he shoplifted: shopkeepers’ privilege

Intentional Infliction of Emotional Harm
1. Outrageous Conduct
   - exceeds the bounds of decency/socially tolerable conduct
   - words alone may be sufficient
   - special relationship
2. Intent
   - purpose or desire to cause harm
   - substantial certainty
   - recklessness
   - high degree of risk of emotional harm and Δ acts in conscious disregard of risk
3. Causation/volition
   - But for causation
   - Affirmative voluntary conduct
4. Serious emotional harm
   - reasonable person of ordinary sensibilities
   - severe
   - intensity and duration factors
   - objective evidence not required by helpful
   - directed at Π
Secondary parties exceptions
   Family members present and known to Δ
   Others—extreme violence and likelihood of shock

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   - objective evidence not required by helpful
   - directed at Π
Secondary parties exceptions
   Family members present and known to Δ
   Others—extreme violence and likelihood of shock
XX. Trespass to Chattels and Conversion

A. Trespass to Chattels
   1. person is deprived of his property for a period of time, or the property is damaged
   2. Damages include temporary loss of use and repair costs
   3. chattel is impaired as to its condition, quality, or value

B. Conversion
   2. depriation of property is for a lengthy period of time, or the property is lost or destroyed
   1. has to be so serious that the court will consider that there has been a forced sale to Δ.
   3. damages measured by fair market value of goods
   4. so seriously interferes with the right of another to control it, the actor may be required to pay full value.

C. United States v Arora
   1. Arora tampered with and completely destroyed cells
   2. Conversion!
   3. Facts considered:
      a)extent and duration of the actor’s exercise of dominion or control
      b)actor’s intent to assert a right in fact inconsistent with the other’s right of control
      c)actors good faith
      d)extent and duration of the interference with the other’s right of control
      e)harm done to the chattel
      f)inconvenience and expense caused to owner

D. Spleenless
   1. court said spleen cells were not property interest, so no conversion
   2. can sue for informed consent
   3. policy reasons: protect research

XXI. Defenses and Privileges

A. Consent
   1. Hogan v Tavzel  p 839
a) Tavzel and Hogan had consentual sex, Tavzel gave Hogan STD
b) special relationship of trust between husb and wife, consent to sex
c) consent to intercourse not the same as consent to getting STD!

2. **Hellriegel v Tholl**
   a) teenager seriously injured when horsing around with friends and they threw him in lake
   b) ”you couldn’t throw me in lake” invited it
   c) consent to horseplay = consent to assume all reasonable risks involved, like football
   d) not battery b/c not offensive touching, and had consent.

3. **Reavis v Slominski**
   a) sexual assault at work
   b) he had repeatedly been able to engage in sexual relations with her, even though she said no = evidence that she is unable to say no.
   c) therefore no consent!

Consent: express, implied, vitiation of defense, exceeding consent, fraud, mistake, duress,

Self defense: have to have reasonable fear of injury

Self defense: actual or apparent necessity
Δ believes necessity
Reasonable force, retreat rules, verbal provocation, excessive force

Cannot use deadly force to protect property!
Necessity only for property